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**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b)  
Table of Allotments,  
FM Broadcast Stations  
(Auburn, Alabama)

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)  
)  
)  
)  
)

MM Docket No. 01-104 /  
RM-10103

To: Chief, Allocations Branch  
Stop Code 1800D5

**COMMENTS AND COUNTERPROPOSAL  
OF COX RADIO, INC. AND CXR HOLDINGS, INC.**

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## SUMMARY

In response to the *Notice of Proposed Rule Making* in MM Docket No. 01-104, Cox Radio, Inc. and its wholly-owned subsidiary CXR Holdings, Inc. (collectively “Cox”) respectfully propose a mutually exclusive set of interrelated allotments that would result in first local service for three communities as a counterproposal to Auburn Network, Inc.’s proposal to allot Channel 263A at Auburn, Alabama (“Auburn Proposal”). Cox’s Counterproposal proposes to substitute Channel 262A for Channel 247A at Dadeville, Alabama, for WZLM(FM) which is mutually exclusive with the Auburn Proposal. This substitution at Dadeville is necessary to substitute Channel 247C2 at Gardendale, Alabama, for Channel 247A at Homewood, Alabama, for use by WRLR(FM) as Gardendale’s first local service. To replace this local service at Homewood, Cox proposes to reallocate Channel 295C from Birmingham to Homewood, Alabama, for use by WODL(FM). To accommodate the provision of first local service to Gardendale, Cox proposes, in addition to the Dadeville substitution: to substitute Channel 300A for Channel 247A in Orrville, Alabama, at a new reference site for WJAM-FM; and to reallocate Channel 248A from Talladega to Goodwater, Alabama, for use by WSSY-FM as a first local service. To accommodate the provision of first local service to Goodwater, Cox proposes to modify the reference coordinates of vacant Channel 248A, Pine Level, Alabama, and to reallocate Channel 249A from Clanton to Jemison, Alabama, for use by WEZZ-FM as a first local service. To accommodate the provision of first local service to Jemison, Cox proposes to modify the reference coordinates of WAYI(FM), Channel 249A, Thomaston, Alabama. Thus, Cox’s Counterproposal would provide first local service to Gardendale, Goodwater and Jemison, while maintaining first local service at Homewood, as compared to the Auburn Proposal, which would provide a second local FM transmission service to that community. Accordingly, grant of Cox’s

Counterproposal over the Auburn Proposal would achieve a preferential arrangement of allotments.

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Amendment of Section 73.202(b)	)	
Table of Allotments,	)	MM Docket No. 01-104
FM Broadcast Stations	)	RM-10103
(Auburn, Alabama)	)	

To: Chief, Allocations Branch  
Stop Code 1800D5

**COMMENTS AND COUNTERPROPOSAL  
OF COX RADIO, INC. AND CXR HOLDINGS, INC.**

1. Cox Radio, Inc. and its wholly-owned subsidiary CXR Holdings, Inc. (collectively "Cox"),<sup>1</sup> by their attorneys, respectfully submit these Comments and Counterproposal in response to the Commission's *Notice of Proposed Rulemaking* in the above-captioned proceeding ("Notice").<sup>2</sup> The *Notice* proposes the allotment of Channel 263A to Auburn, Alabama ("Auburn Proposal"),<sup>3</sup> as the community's second local FM service pursuant to a Petition for Rule Making ("Petition") submitted by Auburn Network, Inc. ("Auburn Network").

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<sup>1</sup> CXR Holdings, Inc. is the licensee of seven radio stations in the Birmingham market including WRLR(FM), Homewood, Alabama, and WODL(FM), Birmingham, Alabama.

<sup>2</sup> In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Auburn, Alabama), *Notice of Proposed Rule Making*, DA 01-1093, MM Docket No. 01-104, RM-10103 (rel. April 27, 2001) ("Notice").

<sup>3</sup> The Auburn Proposal requires a site restriction of 3.2 kilometers south to avoid a short-spacing to the application site for Station WLXY(FM), Channel 263C1, Northport, Alabama. *Notice* at ¶ 4.

2. In these Comments and Counterproposal, Cox respectfully submits a mutually exclusive set of interrelated allotments as a Counterproposal to the Auburn Proposal (the "Counterproposal"). Cox proposes to substitute Channel 262A for Channel 247A at Dadeville for WZLM(FM) which is mutually exclusive with the Auburn Proposal. This substitution at Dadeville is necessary to Cox's interrelated proposal to delete Channel 247A at Homewood, Alabama, and allot Channel 247C2 at Gardendale, Alabama, for use by WRLR(FM) as that community's first local service. To replace the local service at Homewood, Cox proposes to reallocate Channel 295C from Birmingham to Homewood for use by WODL(FM). To accommodate the proposed provision of first local service to Gardendale, Cox proposes (a) the Dadeville substitution; (b) to substitute Channel 300A for Channel 247A in Orrville, Alabama, at a new reference site for WJAM-FM; and (c) to reallocate Channel 248A from Talladega to Goodwater, Alabama, for use by WSSY-FM as a first local service. To accommodate the provision of first local service to Goodwater, Cox proposes to modify the reference coordinates of vacant, unapplied-for Channel 248A, Pine Level, Alabama; and to reallocate Channel 249A from Clanton to Jemison, Alabama, for use by WEZZ-FM as a first local service. To accommodate the provision of first local service to Jemison, Cox proposes to modify the reference coordinates of WAYI(FM), Channel 249A, Thomaston, Alabama. Scott Communications, Inc. ("Scott Communications"), the licensee of WJAM-FM in Orrville, has acquired options to purchase the assets including the FCC licenses of WZLM(FM), Dadeville, WSSY-FM, Talladega, and WEZZ-FM, Clanton, and upon grant of the instant counterproposal, has agreed to exercise such options and in connection with its acquisition of these stations, to apply to the Commission for authority to make the modifications to these stations.<sup>4</sup> Cox has a verbal agreement to reimburse

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<sup>4</sup> See Exhibit A (Letter from Paul Scott Alexander of Scott Communications, Inc., dated *continued...*



Scott Communications for its reasonable expenses in making these facilities modifications. In addition, Cox has obtained consents from the licensees of all affected stations and pledges to reimburse the licensees for reasonable costs in implementing the requested modifications.

3. Grant of the Counterproposal would provide first local service to the communities of Gardendale, Goodwater and Jemison, Alabama, and maintain local service in Homewood. Moreover, the Counterproposal would provide Homewood with a Class C rather than a Class A station and create a “net” gain in service to 221,595 persons over an area of 6,030 square kilometers.<sup>5</sup> In contrast, the Auburn Proposal would provide only a second Class A local FM transmission service to Auburn, Alabama. Cox understands that Auburn Network will be withdrawing its interest in the Auburn Proposal in comments to be filed by Auburn Network. Auburn Network's withdrawal is pursuant to a verbal agreement with Scott Communications and Cox pursuant to which Cox will reimburse Auburn Network for its legitimate and prudent expenses in the preparation and filing of the Petition. Recognizing that other parties may file an expression of interest in the Auburn Proposal, Cox demonstrates herein that grant of its Counterproposal over the Auburn Proposal would achieve a preferential arrangement of allotments.

**I. PROPOSED ALLOTMENT OF CHANNEL 247C2 TO GARDENDALE, ALABAMA.**

4. Cox's Counterproposal proposes the deletion of Channel 247A at Homewood, Alabama, and the allocation of Channel 247C2 at Gardendale, Alabama, for use by WRLR(FM)

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*...continued*

June 15, 2001).

<sup>5</sup> See Exhibit B (Technical Exhibit by du Treil, Lundin & Rackley, Inc. (“Technical Exhibit”)).

as Gardendale's first local service (the "Gardendale Proposal"). The Counterproposal proposes to replace Homewood's first local service by reallocating Channel 295C from Birmingham, Alabama, to Homewood, Alabama, for use by WODL(FM) (the "Homewood Proposal"). Thus, Cox's Counterproposal would provide Gardendale with its first local aural service with no net loss in the number of services assigned to Homewood and thus would achieve a preferential arrangement of allotments.

5. Upon the Commission's adoption of the counterproposal, Cox will timely file an application to operate Channel 247C2 at Gardendale and implement the necessary changes in accordance with applicable Commission rules.

**A. Technical Compliance.**

6. The Gardendale Proposal complies with the Commission's technical requirements.<sup>6</sup> Operation of WRLR(FM) on Channel 247C2 from the proposed reference site would provide the requisite city grade coverage to Gardendale and would comply with the minimum distance separation requirements, with the exception of Channel 247A at Dadeville, Alabama; Channel 247A at Orrville, Alabama; and Channel 248A at Talladega, Alabama.<sup>7</sup> This Counterproposal, however, proposes to modify these allotments to accommodate the Gardendale Proposal. As required by Section 1.420(i) of the Commission's rules, the proposed allotment of Channel 247C2 at Gardendale is mutually exclusive with WRLR(FM)'s present assignment of Channel 247A at Homewood, Alabama.<sup>8</sup>

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<sup>6</sup> See *id.*

<sup>7</sup> See *id.*

<sup>8</sup> See *id.*

7. The Gardendale Proposal would result in a service gain over an area of 6,030 square kilometers containing 215,600 persons and would result in no losses.<sup>9</sup> As proposed, the Channel 247C2 60 dBu service area would contain 902,600 persons in an area of 8,490 square kilometers.<sup>10</sup> No aural services are assigned to Gardendale,<sup>11</sup> and accordingly, grant of Cox's Counterproposal would provide Gardendale with its first local aural service with no net loss in the number of services assigned to Homewood.

**B. Gardendale is an Independent Community Deserving Of First Local Aural Service.**

8. In reviewing a proposal to change a station's community of license, the Commission compares the proposed allotment plan and the existing state of allotments for the communities involved.<sup>12</sup> To determine whether a proposal would result in a preferential arrangement of allotments, the Commission is guided by the FM allotment priorities.<sup>13</sup> The FM priorities are: (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. Co-equal weight is given to priorities (2) and (3).<sup>14</sup> The allotment and upgrade of Channel 247C2 at Gardendale fall under allotment priority (3) because it will bring a first local service to Gardendale, and Homewood will continue to have a local service as a result of the Homewood Proposal. In contrast, retention of the allotment at

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<sup>9</sup> *See id.*

<sup>10</sup> *See id.*

<sup>11</sup> *See id.*

<sup>12</sup> Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990) ("*Change of Community M&O*").

<sup>13</sup> *Id.*

<sup>14</sup> *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982) ("*FM Priorities*").

Homewood only provides Homewood with one local service and Gardendale with no local services. Grant of the Gardendale Proposal and the Homewood Proposal will result in local service to both Gardendale and Homewood, thus achieving a preferential arrangement of allotments.

9. Gardendale qualifies as a community for allotment purposes and merits a first local aural service preference. The Commission defines communities as “geographically identifiable population groupings”<sup>15</sup> and considers whether the political, social and commercial organizations located in the community identify themselves with the community.<sup>16</sup> The Commission has stated that the requirement of community status is generally satisfied if the proposed community is incorporated and listed in the U.S. Census.<sup>17</sup> As discussed in greater detail below, Gardendale has all the indicia of a community for FM allotment purposes. The City of Gardendale was incorporated in 1995<sup>18</sup> and its population is listed in the U.S. Census.<sup>19</sup> Moreover, Gardendale has its own local government led by a Mayor and City Council<sup>20</sup> and

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<sup>15</sup> *Grants and Peralta, New Mexico*, 14 FCC Rcd 21446, ¶ 8 (1999).

<sup>16</sup> *Las Vegas and Rowe, New Mexico*, 16 FCC Rcd 2312, ¶ 3 (2001).

<sup>17</sup> See e.g., *Pontotoc, Tennessee*, 11 FCC Rcd 14430, ¶ 15 (1996) (stating that the proposed community’s incorporation and listing in the Census meet the Commission’s basic criteria for a community); *Brookline, Missouri*, 10 FCC Rcd 13038, ¶ 4 (1995) (“While ‘incorporation is not a prerequisite [for community status], and while a community need not have a clearly delineated area and population, it is no doubt correct to state that in most cases a community is a city, town, village, or other political subdivision’”); *Naples, Florida*, 69 FCC 277, ¶ 11 (1997) (stating that the question of community status is “easily answered” “[i]f it is an incorporated community”).

<sup>18</sup> See Exhibit C (History of Gardendale! (visited June 14, 2001) <<http://www.gardendale.com/history.html>>).

<sup>19</sup> See Exhibit C (U.S. Census Bureau, Census 2000).

<sup>20</sup> See Exhibit C (Letter From Our Mayor (visited June 14, 2001) <[http://www.gardendale.com/City\\_services/Mayor.htm](http://www.gardendale.com/City_services/Mayor.htm)>); Meet the City Council (visited June 14, 2001) <[http://www.gardendale.com/City\\_Services/Council/council.htm](http://www.gardendale.com/City_Services/Council/council.htm)>).

municipal services provided by a police department,<sup>21</sup> Inspection Services Department,<sup>22</sup> Public Works Department,<sup>23</sup> and volunteer Fire and Rescue Department.<sup>24</sup> Gardendale has its own zip code and<sup>25</sup> Post Office.<sup>26</sup> Gardendale has its own private schools,<sup>27</sup> a Chamber of Commerce,<sup>28</sup> numerous local businesses,<sup>29</sup> several health clinics, twenty-four churches,<sup>30</sup> a civic center,<sup>31</sup> a performing arts center,<sup>32</sup> parent-teacher organizations,<sup>33</sup> active youth-sports leagues and clubs,<sup>34</sup>

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<sup>21</sup> See Exhibit C (Gardendale Police Department (visited June 14, 2001) <[http://www.gardendale.com/City\\_Services/Police\\_Dept/police-dept.htm](http://www.gardendale.com/City_Services/Police_Dept/police-dept.htm)>).

<sup>22</sup> See Exhibit C (Gardendale Inspection Services (visited June 14, 2001) <[http://www.gardendale.com/City\\_Services/Inspections/inspections.htm](http://www.gardendale.com/City_Services/Inspections/inspections.htm)>).

<sup>23</sup> See Exhibit C (Gardendale Department of Public Works (visited June 14, 2001) <[http://www.gardendale.com/City\\_Services/Public\\_Works/public\\_works.htm](http://www.gardendale.com/City_Services/Public_Works/public_works.htm)>).

<sup>24</sup> See Exhibit C (Gardendale Fire Department (visited June 14, 2001) <[http://www.gardendale.com/City\\_Services/Fire\\_Dept/fire\\_dept.htm](http://www.gardendale.com/City_Services/Fire_Dept/fire_dept.htm)>).

<sup>25</sup> See Exhibit C (City State Zip Code Associations (visited June 18, 2001) <<http://www.usps.gov/cgi-bin/zip4/ctyzip2>>).

<sup>26</sup> See Exhibit C (Post Office Locator (visited June 14, 2001) <<http://www.gov/cgi-bin/zip4/po>>).

<sup>27</sup> See Exhibit C (Gardendale Schools (visited June 14, 2001) <<http://www.gardendale.com/Community/Schools/schools.htm>>).

<sup>28</sup> See Exhibit C (Gardendale Chamber of Commerce (visited June 17, 2001) <<http://www.gardendale.com/Commerce/Chamber/chamber.htm>>).

<sup>29</sup> See Exhibit C (Zip Code Business Patterns, 1997 Sector Summary (visited June 14, 2001) <<http://www.gov/cgi-win/zbp/sector.exe>>; Gardendale Commerce (visited June 17, 2001) <<http://www.gardendale.com/Commerce/commerce.htm>>).

<sup>30</sup> See Exhibit C (Gardendale Churches (visited June 14, 2001) <<http://www.gardendale.com/Community/Churches/churches.htm>>).

<sup>31</sup> See Exhibit C (Gardendale Civic Center (visited June 14, 2001) <[http://www.gardendale.com/Recreation/Civic\\_Center/civic\\_center.htm](http://www.gardendale.com/Recreation/Civic_Center/civic_center.htm)>).

<sup>32</sup> See Exhibit C (Gardendale Recreation (visited June 14, 2001) <<http://www.gardendale.com/Recreation/recreation.htm>>).

<sup>33</sup> See Exhibit C (Gardendale Schools (visited June 14, 2001) <<http://www.gardendale.com/Community/Schools/schools.htm>>).

community parks and sports facilities,<sup>35</sup> and a public library.<sup>36</sup> Thus, Gardendale clearly contains all the indicia of community status.

10. Gardendale also is clearly independent of the Birmingham Urbanized Area. Generally, if a proposed reallocation would result in city-grade coverage of an urbanized area by 50% or more, the Commission will conduct an analysis under *Tuck* to determine whether the proposed community of license is independent of the urbanized area.<sup>37</sup> The existing Channel 247A at Homewood encompasses 59% of the Birmingham Urbanized Area, and the proposed allotment of Channel 247C2 at Gardendale would encompass 90% of the Birmingham Urbanized Area.<sup>38</sup> In this case, however, the Commission does not require a *Tuck* showing because even though the proposed reallocation would encompass more than 50% of the urbanized area, the station currently is located within the Birmingham Urbanized Area and provides service to more than 50% of the urbanized area from its present allotment.<sup>39</sup> Thus, “the station is not ‘moving

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...continued

<sup>34</sup> See Exhibit C (Gardendale Youth Baseball (visited June 16, 2001) <<http://gdalebaseball.tripod.com>>; Cub Scouts Pack 714 Gardendale, Alabama (visited June 16, 2001) <<http://www.geocities.com/Yosemite/9552/>>).

<sup>35</sup> See Exhibit C (Gardendale City Administration (visited June 14, 2001) <[http://www.gardendale.com/City\\_Services/Administration/administration.htm](http://www.gardendale.com/City_Services/Administration/administration.htm)>; Gardendale Recreation (visited June 14, 2001) <<http://www.gardendale.com/Recreation/recreation.htm>>).

<sup>36</sup> See Exhibit C (Gardendale Library (visited June 14, 2001) <<http://www.gardendale.com/Library/library.htm>>; The Gardendale-Martha Moore Public Library (visited June 14, 2001) <<http://www.gardendale.lib.al.us/>>).

<sup>37</sup> *Faye and Richard Tuck*, 3 FCC Rcd 5374 at ¶¶ 1-4 (1988) (“*Tuck*”).

<sup>38</sup> See Exhibit B (Technical Exhibit).

<sup>39</sup> See e.g., *Greeley and Broomfield, Colorado*, 15 FCC Rcd 9519, ¶ 2 (2000); *Moncks Corner, Kiawah Island, and Sampit, South Carolina*, 15 FCC Rcd 8973, ¶ 16 (2000); *Boulder and Lafayette, Colorado*, 11 FCC Rcd 3632 (1996); *East Los Angeles, et al., California*, 10 FCC Rcd 2864 (1995).

into' an urbanized area, but is already serving the area.''<sup>40</sup> Nevertheless, an analysis of the *Tuck* factors clearly demonstrates that Gardendale is independent of the Birmingham Urbanized Area.

11. In evaluating a community's independence, the Commission is guided by the following three factors: (1) signal population coverage, that is, the degree to which the proposed station will provide service to both the suburban community and the larger metropolis; (2) the size and proximity of the suburban community relative to the metropolis; and (3) the interdependence of the suburban community with the metropolis, as gauged by a number of indicia.<sup>41</sup> All three factors indicate that Gardendale is entitled to a first local service preference.

**(1) Signal population coverage.**

12. The existing Channel 247A at Homewood covers 59% of the land area and 72% of the population of the Birmingham Urbanized Area with a 70 dBu signal.<sup>42</sup> The proposed Channel 247C2 at Gardendale will encompass 90% of the land area and 94% of the population of the Birmingham Urbanized Area with its 70 dBu signal contour.<sup>43</sup> Although the station's coverage of the urbanized area will increase, the Birmingham Urbanized Area encompasses only 55% and 85% of the Gardendale city area and population, respectively, while the Birmingham Urbanized Area entirely encompasses Homewood.<sup>44</sup> Thus, the reallocation to Gardendale would

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<sup>40</sup> *Shelby and Dutton, Montana*, 14 FCC Rcd 9514 (1999).

<sup>41</sup> *Eatonton and Sandy Springs, Georgia, and Anniston and Lineville, Alabama*, 6 FCC Rcd 6580 (1991), *appl. for rev. dismissed*, 12 FCC Rcd 8392 ¶ 20 (1997), *citing Change of Community M&O*, 5 FCC Rcd at n. 14. *See also RKO General (KFRC)*, 5 FCC Rcd 3222 (1990); *Tuck*, 3 FCC Rcd 5374 (1988); *Huntington Broadcasting Co. v. FCC*, 192 F.2d 33 (D.C. Cir. 1951).

<sup>42</sup> *See* Exhibit B (Technical Exhibit).

<sup>43</sup> *See id.*

<sup>44</sup> *See id.*

result in first local service to a significant number of persons residing in the community of license but *outside* the Birmingham Urbanized Area.

**(2) Population and proximity in comparison to Birmingham.**

13. According to the 2000 Census, Gardendale has a population of 11,626 persons.<sup>45</sup> This is approximately 4.78% of the population of Birmingham.<sup>46</sup> As to proximity, Gardendale is located eight miles from Birmingham.<sup>47</sup> Nonetheless, Gardendale is a substantial community that is separate and apart from Birmingham. Moreover, the Commission has granted channel change petitions where the proposed community's population as a percentage of that of the central city was considerably smaller<sup>48</sup> and where the community was located much closer to the central city of the urbanized area.<sup>49</sup>

**(3) Tuck analysis.**

14. An analysis of Gardendale based on the *Tuck* factors clearly indicates that Gardendale is sufficiently independent of the Birmingham Urbanized Area to justify a first local service preference. In *Tuck*, the Commission set forth an eight-factor analysis of the interdependence of a community within a larger urbanized area. The Commission analyzes:

(a) whether community leaders and residents perceive the specified community as being an

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<sup>45</sup> See Exhibit C (U.S. Census Bureau, Census 2000).

<sup>46</sup> Birmingham's population was 242,820 according to the 2000 Census. See Exhibit C (U.S. Census Bureau, Census 2000).

<sup>47</sup> See Exhibit C (Gardendale Community Information Facts Page (visited June 14, 2001) <<http://www.digital-neighbors.com/city/al/gardendale793b.htm>>).

<sup>48</sup> E.g. *Ada, Newcastle and Watonga, Oklahoma*, 11 FCC Rcd 16896 (1996) ("*Ada, Newcastle*") (finding Ada independent of Oklahoma City despite population equal to 0.9% of that of central city).

<sup>49</sup> E.g. *Mullins and Briarcliffe Acres, South Carolina*, 14 FCC Rcd 10516 (1999) ("*Mullins*") (finding Mullins independent of Myrtle Beach Urbanized Area despite only four miles separation).



integral part of, or separate from, the larger metropolitan area; (b) whether the specified community has its own local government and elected officials; (c) the extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools, and libraries; (d) whether the smaller community has its own local telephone book provided by the local telephone company or zip code; (e) whether the community has its own commercial establishments, health facilities, and transportation systems; (f) the extent to which the community residents work in the larger metropolitan area, rather than the specified community; (g) whether the smaller community has its own newspaper or other media that covers the community's needs and interests; and (h) the extent to which the specified community and the central city are part of the same advertising market.<sup>50</sup> Although the Commission has generally held that a community must satisfy only a majority of the *Tuck* factors to be considered independent for allotment purposes,<sup>51</sup> an examination of the facts presented herein show that Gardendale satisfies all eight of those factors.

(a) *Gardendale residents consider their community to be separate from Birmingham.*

15. Although Gardendale is located near Birmingham, its residents consider themselves part of their own community. Gardendale's web site tells the story of a city that traces its roots back to 1825 when Otis Dyer first homesteaded an eighty acre tract of land in the area.<sup>52</sup> Originally called Jugtown, after a jug and churn factory that operated there, Gardendale adopted its present name in 1906 following a campaign by local school teacher Hettie Thomason

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<sup>50</sup> *Tuck*, 3 FCC Rcd 5374 at ¶ 36.

<sup>51</sup> *Parker and St. Joe, Florida*, 11 FCC Rcd 1095 (1996).

<sup>52</sup> See Exhibit C (History of Gardendale (visited June 14, 2001) <<http://www.gardendale.com/history.html>>; Community (visited June 14, 2001) <<http://www.gardendale.com/Community/community.htm>>).

Cargo.<sup>53</sup> Gardendale was incorporated in 1955 and, as stated on the Welcome page of the city's website, "has grown from a small suburb on the outskirts of Birmingham, Alabama, to a city recognized as a leader in northeast Jefferson County."<sup>54</sup>

16. In the words of Mayor Kenneth A. Clemons, Gardendale "is a city where parks, shady sidewalks, manicured lawns, churches, great schools, varied shopping opportunities, and caring people all merge to make community a word with true meaning for us."<sup>55</sup> The many and varied community oriented activities centered in Gardendale confirm Mayor Clemons's assertions: Gardendale has twenty-four churches within its city limits;<sup>56</sup> it boasts its own new 45,000 square foot civic center which offers meeting rooms and exercise facilities;<sup>57</sup> and it offers a new, state of the art performing arts center that hosts a performing arts series for Gardendale residents.<sup>58</sup> These attributes, coupled with the usual evidence of a thriving, independent community, such as parent-teacher organizations,<sup>59</sup> active youth-sports leagues and clubs,<sup>60</sup>

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<sup>53</sup> See Exhibit C (History of Gardendale (visited June 14, 2001) <<http://www.gardendale.com/history.html>>).

<sup>54</sup> See Exhibit C (Welcome to Gardendale! (visited June 14, 2001) <<http://www.gardendale.com>>).

<sup>55</sup> See Exhibit C (Letter From Our Mayor (visited June 14, 2001) <[http://www.gardendale.com/City\\_services/Mayor.htm](http://www.gardendale.com/City_services/Mayor.htm)>).

<sup>56</sup> See Exhibit C (Gardendale Churches (visited June 14, 2001) <<http://www.gardendale.com/Community/Churches/churches.htm>>).

<sup>57</sup> See Exhibit C (Gardendale Civic Center (visited June 14, 2001) <[http://www.gardendale.com/Recreation/Civic\\_Center/civic\\_center.htm](http://www.gardendale.com/Recreation/Civic_Center/civic_center.htm)>).

<sup>58</sup> See Exhibit C (Gardendale Recreation (visited June 14, 2001) <<http://www.gardendale.com/Recreation/recreation.htm>>).

<sup>59</sup> See Exhibit C (Gardendale Schools (visited June 14, 2001) <<http://www.gardendale.com/Community/Schools/schools.htm>>).

<sup>60</sup> See Exhibit C (Gardendale Youth Baseball (visited June 16, 2001) <<http://gdalebaseball.tripod.com>>; Cub Scouts Pack 714 Gardendale, Alabama (visited June 16, 2001) <<http://www.geocities.com/Yosemite/9552/>>).

community parks and sports facilities,<sup>61</sup> and a 7,730 square-foot public library<sup>62</sup> show that Gardendale views itself, and is, its own community, independent of Birmingham.

(b) *Gardendale has its own local government and elected officials.*

17. Gardendale's local government plays a large part in facilitating and promoting the city's community activities and gives local residents an opportunity to participate in the administration of the community's affairs. Gardendale has a Mayor and a City Council with one member elected from each of the city's five Wards.<sup>63</sup>

(c) *Gardendale provides extensive municipal services to its residents.*

18. Gardendale's city council oversees the provision of extensive municipal services to the city's residents.<sup>64</sup> The Gardendale Police Department employs twenty-nine full-time and twenty-nine part-time employees, who perform a full range of public safety duties from school crossing guard duty, to basic and bicycle patrol, to criminal investigation.<sup>65</sup> The Department takes an active role in community life, administering a program called Police Explorers, which employs youths between the ages of fourteen and twenty in various community-oriented tasks.<sup>66</sup>

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<sup>61</sup> See Exhibit C (Gardendale City Administration (visited June 14, 2001) <[http://www.gardendale.com/City\\_Services/Administration/administration.htm](http://www.gardendale.com/City_Services/Administration/administration.htm)>; Gardendale Recreation (visited June 14, 2001) <<http://www.gardendale.com/Recreation/recreation.htm>>).

<sup>62</sup> See Exhibit C (Gardendale Library (visited June 14, 2001) <<http://www.gardendale.com/Library/library.htm>>; The Gardendale-Martha Moore Public Library (visited June 14, 2001) <<http://www.gardendale.lib.al.us/>>).

<sup>63</sup> See Exhibit C (Letter From Our Mayor (visited June 14, 2001) <[http://www.gardendale.com/City\\_services/Mayor.htm](http://www.gardendale.com/City_services/Mayor.htm)>; Meet the City Council (visited June 14, 2001) <[http://www.gardendale.com/City\\_Services/Council/council.htm](http://www.gardendale.com/City_Services/Council/council.htm)>).

<sup>64</sup> See Exhibit C (Gardendale City Services (visited June 14, 2001) <[http://www.gardendale.com/City\\_Services/city\\_services.htm](http://www.gardendale.com/City_Services/city_services.htm)>).

<sup>65</sup> See Exhibit C (Gardendale Police Department (visited June 14, 2001) <[http://www.gardendale.com/City\\_Services/Police\\_Dept/police-dept.htm](http://www.gardendale.com/City_Services/Police_Dept/police-dept.htm)>).

<sup>66</sup> See *id.*

Gardendale's active police force has consistently enabled the city to maintain one of the lowest crime rates in Jefferson County.<sup>67</sup>

19. Gardendale has its own Inspection Services Department which handles all matters related to zoning.<sup>68</sup> Its full-time staff of three persons assists residents and businesses in applying for building permits and handles all post-building inspection duties.<sup>69</sup> Gardendale also has its own Public Works Department, which participates in city beautification and clean-up efforts, employing a fleet of dump trucks, brush trucks, loaders, leaf vacuums, and tractors.<sup>70</sup> The Public Works Department maintains Gardendale's 360 streets which cover over 100 miles.<sup>71</sup> Gardendale also has its own volunteer Fire and Rescue Department, comprised of twenty-three dedicated Gardendale citizens led by full-time Chief Clint Doss.<sup>72</sup>

20. Gardendale students attend Jefferson County schools which are located in Gardendale and Gardendale has a city government committee that monitors its four public schools and acts as a liaison between its citizens and the county board.<sup>73</sup> Each public school has

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<sup>67</sup> *See id.*

<sup>68</sup> *See* Exhibit C (Gardendale Inspection Services (visited June 14, 2001) <[http://www.gardendale.com/City\\_Services/Inspections/inspections.htm](http://www.gardendale.com/City_Services/Inspections/inspections.htm)>).

<sup>69</sup> *See id.*

<sup>70</sup> *See* Exhibit C (Gardendale Department of Public Works (visited June 14, 2001) <[http://www.gardendale.com/City\\_Services/Public\\_Works/public\\_works.htm](http://www.gardendale.com/City_Services/Public_Works/public_works.htm)>).

<sup>71</sup> *See id.*

<sup>72</sup> *See* Exhibit C (Gardendale Fire Department (visited June 14, 2001) <[http://www.gardendale.com/City\\_Services/Fire\\_Dept/fire\\_dept.htm](http://www.gardendale.com/City_Services/Fire_Dept/fire_dept.htm)>).

<sup>73</sup> *See* Exhibit C (Gardendale Schools (visited June 14, 2001) <<http://www.gardendale.com/Community/Schools/schools.htm>>).

an active local Parent Teacher's Association.<sup>74</sup> Gardendale also has two private grade schools and several private pre-schools.<sup>75</sup>

21. Gardendale also takes part in several services offered by Jefferson County, including street light and sewer maintenance.<sup>76</sup> It pays Jefferson County for space in the county landfill. Only water service is provided by the city of Birmingham.<sup>77</sup>

(d) *Gardendale has its own zip code.*

22. Gardendale has its own zip code (35071)<sup>78</sup> and its own Post Office.<sup>79</sup>

(e) *Gardendale has many commercial establishments and considerable health care resources.*

23. Gardendale has a considerable local commercial base that includes approximately 350 businesses within the city that serve Gardendale residents.<sup>80</sup> Many of these businesses identify themselves as Gardendale businesses by using "Gardendale" in their name including the Gardendale Appliance Center, the Gardendale Jewelry Co., Gardendale Wholesale Transmission and Automotive, and the Gardendale Pet Clinic.<sup>81</sup> Moreover, many of these businesses, such as

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<sup>74</sup> See *id.*

<sup>75</sup> See *id.*

<sup>76</sup> Conversation with Gardendale City Clerk.

<sup>77</sup> *Id.*

<sup>78</sup> See Exhibit C (City State Zip Code Associations (visited June 14, 2001) <<http://www.usps.gov/cgi-bin/zip4/ctyzip2>>).

<sup>79</sup> See Exhibit C (Post Office Locator (visited June 14, 2001) <<http://www.gov/cgi-bin/zip4/po>>).

<sup>80</sup> See Exhibit C (Zip Code Business Patterns, 1997 Sector Summary (visited June 14, 2001) <<http://www.gov/cgi-win/zbp/sector.exe>>; Gardendale Commerce (visited June 17, 2001) <<http://www.gardendale.com/Commerce/commerce.htm>>).

<sup>81</sup> See Exhibit C (Yahoo! Yellow Pages, Gardendale, AL (visited June 14, 2001) <<http://yp.yahoo.com/py/ypResults.py?stx=gardendale&stp=a&tab=B2B&city=Gardendale&state=AL&country=us&slt=33.670799&sln=-86.818901&cs=5>>).

convenience stores, grocery stores, and barber shops,<sup>82</sup> are clearly designed to serve Gardendale residents. Gardendale has a local Chamber of Commerce that was organized in 1987 and actively participates in promoting the Gardendale community to businesses seeking to locate there.<sup>83</sup> Gardendale has several health clinics, and residents have access to specialty medical services ranging from pediatric care to eye care to chiropractic care.

(f) *Gardendale offers its residents substantial employment opportunities.*

24. Gardendale's substantial local business base provides its residents with many employment opportunities. According to the 1990 Census, 17.7% of Gardendale residents over the age of sixteen worked in Gardendale.<sup>84</sup> The Commission has considered communities independent of their urbanized area under circumstances where a substantially smaller percentage of residents were employed within the community.<sup>85</sup>

(g) *Gardendale has local media outlets.*

25. Gardendale residents have access to local media through the *North Jefferson News*, a regional newspaper. This paper has a circulation of approximately 5,000 copies in northern Alabama, including Gardendale.<sup>86</sup> The *North Jefferson News* also distributes a

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<sup>82</sup> See *id.*

<sup>83</sup> See Exhibit C ( History of Gardendale (visited June 14, 2001) <<http://www.gardendale.com/history.html>>; Community (visited June 14, 2001) <<http://www.gardendale.com/Community/community.htm>>; Gardendale Chamber of Commerce (visited June 17, 2001) <<http://www.gardendale.com/Commerce/Chamber/chamber.htm>>).

<sup>84</sup> See Exhibit C (Census Lookup: Gardendale City (visited June 18, 2001) <<http://venus.census.gov/cdrom/lookup/992883963>>)

<sup>85</sup> *Albemarle and Indian Trail, North Carolina*, 14 FCC 10524 (1999) (“*Albemarle*”) (holding Indian Trail deserving of first local service where only 11% of the residents worked within the community).

<sup>86</sup> Conversation with Harvey Webb, Circulation Manager of the *North Jefferson News*.

shopping circular throughout its area of circulation, including Gardendale, called the *Shopper*. The *Shopper* has a circulation of 20,000 and reaches every home in Gardendale.<sup>87</sup> The majority of the circulation of both the *North Jefferson News* and the *Shopper* is to Gardendale residents.<sup>88</sup> In addition, numerous Gardendale organizations, including the Youth Baseball League, the city government, several churches, and the Gardendale Chamber of Commerce maintain web sites that provide information about the community.<sup>89</sup>

(h) *Gardendale businesses can advertise to residents directly.*

26. These various media outlets show that Gardendale businesses can reach Gardendale residents without utilizing the Birmingham advertising market. Businesses can advertise in the *North Jefferson News* and the *Shopper*. An estimated seventy-five percent of the businesses that advertise in these publications are based in Gardendale.<sup>90</sup>

27. In sum, Gardendale clearly satisfies the *Tuck* requirements for demonstrating an independent community for allotment purposes and thus merits a first local service preference. The Gardendale Proposal therefore would serve the public interest as it would provide a first local service to Gardendale and result in a service gain to 215,600 persons with no resulting

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<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> See Exhibit C (these organizations include the Cub Scouts (visited June 16, 2001) <[www.geocities.com/Yosemite/9552/](http://www.geocities.com/Yosemite/9552/)>; the Gardendale Youth Baseball League (visited June 16, 2001) <<http://gdalebaseball.tripod.com/>>; Gardendale's First Baptist Church (visited June 17, 2001) <<http://63.241.144.187/templates/cusgardendale/default.asp?id=1415>>; Oak Grove Free Will Baptist Church (visited June 17, 2001) <<http://www.ogfwbc.org>>; Church of Christ – Gardendale, Alabama (visited June 16, 2001) <<http://gardendale-al-coc.com/main.htm>>).

<sup>90</sup> Conversation with Harvey Webb, Circulation Manager of the *North Jefferson News*.

losses of service. Moreover, as described below, Homewood would continue to have local service.

## **II. PROPOSED REALLOTMENT OF CHANNEL 295C TO HOMEWOOD, ALABAMA.**

28. Cox's Homewood Proposal would replace the first local service provided by Channel 247A at Homewood by reallocating Channel 295C from Birmingham to Homewood, Alabama, for use by WODL(FM) to provide local service to Homewood. Upon the Commission's adoption of the Counterproposal, Cox will timely file an application to obtain authorization to operate Channel 295C at Homewood and implement the required changes in accordance with applicable Commission rules.

### **A. Technical Compliance.**

29. The Homewood Proposal complies with the Commission's technical requirements.<sup>91</sup> The proposed site is the presently licensed transmitter site for WODL(FM).<sup>92</sup> Operation from this site would provide the requisite city grade signal coverage to all of Homewood and would comply with the minimum distance separation requirements with the exception of Channel 295A at Stonewall, Mississippi, and Channel 296C2 at Rockmart, Georgia.<sup>93</sup> However, because WODL(FM) did not initiate these short-spacings, the proposed Homewood allotment should be considered fully-spaced for allotment purposes.<sup>94</sup> Both of the

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<sup>91</sup> See Exhibit B (Technical Exhibit).

<sup>92</sup> See *id.*

<sup>93</sup> See *id.*

<sup>94</sup> See *Kankakee and Park Forest, Illinois*, DA 01-700, MM Docket No. 99-330, RM-9677, ¶ 2 (rel. Mar. 23, 2001) (stating that stations may "change their community of license where other stations had relocated their transmitters closer in to the station under Section 73.215" and the "pre-existing short-spacings do not preclude grant" of the proposal).



Mississippi and Georgia stations requested authorization from the Commission to be short-spaced to Channel 295C pursuant to Section 73.215 of the Commission's rules, and the Commission has held that such short-spacings would not preclude consideration of the proposed allotment as fully spaced.<sup>95</sup> As required by Section 1.420(i) of the Commission's rules, the proposed allotment of Channel 295C at Homewood is mutually exclusive with WODL(FM)'s present assignment of Channel 295C at Birmingham, Alabama.<sup>96</sup> Channel 295C's 60 dBu service area would maintain service to 1,222,500 persons in an area of 18,130 square kilometers with no gains or losses of service.<sup>97</sup>

**B. Homewood is an Independent Community Meriting First Local Service.**

30. Comparing the Homewood Proposal to the existing state of allotments, it is clear that grant of the Homewood Proposal would achieve a preferential arrangement of allotments. Reallotment of Channel 295C to Homewood would replace Homewood's first local service and the station's current city of license, Birmingham, would remain served by a panoply of local services. Thus, the Homewood Proposal would invoke priority three, first local service, while retention of Channel 295C at Birmingham would invoke priority four.

31. Because Homewood already has a local service, the Commission has previously determined that Homewood merits its own local radio service.<sup>98</sup> Moreover, as stated, the Commission does not require a *Tuck* showing where the proponent proposes to move from one

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<sup>95</sup> *Id.*

<sup>96</sup> *See Exhibit B (Technical Exhibit).*

<sup>97</sup> *See id.*

<sup>98</sup> *See Implementation of BC Docket 80-90 to Increase the Availability of FM Broadcast Assignments*, 59 RR2d 679 (1985) (denying petition for reconsideration of allotment of Channel 247A to Homewood as first local service).

community within an urbanized area to another community within the same urbanized area.<sup>99</sup>

Nonetheless, Cox presents the following showing regarding Homewood's independence from the Birmingham Urbanized Area. This showing conclusively demonstrates that Homewood is independent of the Birmingham urbanized area and merits a first local service preference.

**(1) Signal population coverage.**

32. At its present location, Channel 295C at Birmingham covers the entire Birmingham Urbanized Area, including the City of Homewood, with a 70 dBu signal. Because there will be no change in the location of WODL(FM)'s transmitter site, the station will continue to provide 70 dBu coverage to the entire Birmingham urbanized area, including the City of Homewood.<sup>100</sup> Thus, the proposed reallocation does not result in any greater coverage of the Birmingham Urbanized Area.

**(2) Population and proximity in comparison to Birmingham.**

33. Homewood is a city of 25,043 persons<sup>101</sup> located approximately five miles from Birmingham. Homewood's population is about ten percent that of Birmingham's; both the population and distance figures are well within the range of other cities the Commission has found to be independent of their urbanized area.<sup>102</sup>

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<sup>99</sup> See e.g., *Greeley and Broomfield, Colorado*, 15 FCC Rcd 9519, ¶ 2 (2000); *Moncks Corner, Kiawah Island, and Sampit, South Carolina*, 15 FCC Rcd 8973, ¶ 16 (2000); *Boulder and Lafayette, Colorado*, 11 FCC Rcd 3632 (1996); *East Los Angeles, et al., California*, 10 FCC Rcd 2864 (1995).

<sup>100</sup> See Exhibit B (Technical Exhibit).

<sup>101</sup> See Exhibit D (U.S. Census Bureau, Census 2000).

<sup>102</sup> E.g. *Ada, Newcastle; Mullins*.

**(3) *Tuck* analysis.**

34. Applying the *Tuck* factors to the Homewood Proposal, it is clear that Homewood is independent of the Birmingham Urbanized Area.

(a) *Homewood residents consider their community to be separate from Birmingham.*

35. Homewood is a thriving community that its residents view as separate and apart from Birmingham. Homewood has an award winning school system independent of the county system and of Birmingham's school system, and its own Board of Education.<sup>103</sup> Homewood has nineteen churches within its city limits,<sup>104</sup> has its own 56-year-old Chamber of Commerce,<sup>105</sup> and its own public library.<sup>106</sup> In addition, Homewood is home to several institutions of higher learning including Samford University, the Herzig Institute, and Virginia College.<sup>107</sup> In the words of Mayor McCulley: "We are a city of both diversity and unity. We are both the historic and the new. We are more than just a city . . . we are a state of mind."<sup>108</sup>

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<sup>103</sup> See Exhibit D (Village Profile: Homewood. Alabama (visited June 15, 2001) <<http://www.villageprofile.com/alabama/homewood/pg2.html>>; About Us: Greetings From the Mayor's Office, Homewood at a Glance (visited June 15, 2001) <<http://www.homewoodal.com/about.html>>).

<sup>104</sup> See Exhibit D (Homewood Churches (visited June 15, 2001) <<http://www.homewoodal.com/churches.html>>).

<sup>105</sup> See Exhibit D (Homewood Chamber of Commerce (visited June 18, 2001) <<http://www.homewoodchamber.com/main.html>>; <<http://www.homewoodchamber.com/aboutus.html>>).

<sup>106</sup> See Exhibit D (Homewood Public Library (Library visited June 18, 2001) <<http://www.homewoodal.com/lib.html>>; <<http://www.homewood.lib.al.us/>>).

<sup>107</sup> See Exhibit D (Homewood Chamber of Commerce: About Us (visited June 18, 2001) <<http://www.homewoodchamber.com/aboutus.html>>).

<sup>108</sup> See Exhibit D (About Us: Greetings From the Mayor's Office, Homewood at a Glance (visited June 18, 2001) <<http://www.homewoodal.com/about.html>>).

(b) *Homewood has its own local government and elected officials.*

36. Homewood has its own city government led by Mayor McCulley and eleven City Council members.<sup>109</sup> These elected officials oversee the extensive operations of a city government that provides nearly all the municipal services required by Homewood residents and also works with the Chamber of Commerce to promote the city to businesses seeking to locate in the area.<sup>110</sup>

(c) *Homewood provides nearly all municipal services to its residents.*

37. Homewood's city government provides all municipal services except water, which is provided by Birmingham.<sup>111</sup> Homewood's police department has ninety-seven employees, including sixty-nine sworn officers.<sup>112</sup> Homewood also provides its own fire and rescue services, with three engine locations throughout the city and sixty-eight firefighters.<sup>113</sup> Homewood also administers its own school system, comprised of three elementary schools, one middle school, and one high school,<sup>114</sup> and provides its citizens with additional services such as garbage collection, voter registration, and park maintenance.<sup>115</sup>

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<sup>109</sup> See Exhibit D (Homewood City Council (visited June 15, 2001) <<http://homewoodchamber.com/council.html>>).

<sup>110</sup> See Exhibit D (Homewood Chamber of Commerce (visited June 18, 2001) <<http://www.homewoodchamber.com/main.html>>; <<http://www.homewoodchamber.com/aboutus.html>>).

<sup>111</sup> See Exhibit D (About Us: Greetings From the Mayor's Office, Homewood at a Glance (visited June 18, 2001) <<http://www.homewoodal.com/about.html>>).

<sup>112</sup> See *id.*

<sup>113</sup> See *id.*

<sup>114</sup> See *id.*

<sup>115</sup> See *id.*

(d) *Homewood has its own post office.*

38. Homewood has its own post office.<sup>116</sup> Although it does not have a zip code that is exclusively associated with it, Homewood is associated with four zip codes that cover its area.<sup>117</sup>

(e) *Homewood has many commercial establishments and considerable health care resources, including two hospitals.*

39. Homewood is the location of more than 2000 businesses including large employers such as manufacturers and hospitals, as well as the small businesses that provide the backbone of any community's commerce.<sup>118</sup> Many such businesses identify themselves with Homewood by including "Homewood" in their names, *e.g.*, Homewood Musical Instrument Co., Homewood Cycle and Fitness, and Homewood Automotive and Brake Center.<sup>119</sup> In addition, Homewood has two hospitals with over 165 doctors and more than thirty dentists. Homewood also has several smaller health clinics.<sup>120</sup>

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<sup>116</sup> See *id.*

<sup>117</sup> See Exhibit D (City state/ Zip Code Associations (visited June 15, 2001) <<http://www.usps.com/cgi-bin/zip/4ctystzip2>>); Conversation with representatives of the Homewood Chamber of Commerce. The zip codes are 35209, 35259, 35226, and 35216.

<sup>118</sup> Conversation with representatives of the Homewood Chamber of Commerce; Exhibit C (Village Profile: Homewood. Alabama (visited June 15, 2001) <<http://www.villageprofile.com/alabama/homewood/pg2.html>>).

<sup>119</sup> See Exhibit D (Yahoo! Yellow Pages, Homewood, Alabama (visited June 17, 2001) <<http://yp.yahoo.com/py/ypResults.py?Pyt=Typ&city=Homewood&state=AL&country=us&slt=31.369400&sln=-87.599400&cs=4&tab=B2C&stx=Homewood&stp=a&desc=Homewood&offset=58&FBoffset=2&stat=ClkNxtLower>>).

<sup>120</sup> See Exhibit D (Homewood Medical/Health Contacts (visited June 15, 2001) <<http://www.homewoodal.com/health.html>>; About Us: Homewood at a Glance (visited June 15, 2001) <<http://www.homewoodal.com/about.html>>).

(f) *Homewood offers its residents substantial employment opportunities.*

40. Homewood's extensive business base offers its citizens considerable employment opportunities. As of the 1990 Census, nineteen percent of the 11,905 workers over the age of sixteen who call Homewood home also worked there.<sup>121</sup> As noted above, the Commission has previously found that a community was independent of the urbanized area where the employment market accommodated considerably fewer residents.<sup>122</sup>

(g) *Homewood has local media outlets.*

41. Homewood is currently served by radio station WRLR(FM), Channel 247A (which is proposed to be replaced by WODL(FM)), and television station WTTO(TV), Channel 21, an affiliate of UPN. These media outlets provide Homewood residents with ample opportunities to gain information regarding local events and other matters of community interest.

(h) *Homewood businesses can advertise to residents directly.*

42. Homewood's media outlets provide Homewood businesses with more than enough opportunities to reach Homewood residents without using the Birmingham advertising market. In addition, active web sites run by commercial establishments in Homewood offer advertising opportunities to Homewood residents that are completely separate from the Birmingham advertising market.<sup>123</sup>

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<sup>121</sup> See Exhibit D (1990 Census Lookup: Homewood City (visited June 15, 2001) <<http://venus.census.gov/cdrom/lookup/992633000>>).

<sup>122</sup> See *Albemarle*, 14 FCC 10524 (finding community deserving of first local service where only 11% of the residents worked in the community).

<sup>123</sup> See Exhibit D (Homewood.net Cybermall (visited June 18, 2001) <<http://www.homewood.net/homewood.htm>>; <<http://www.homewood.net/shop.htm>>).

43. In sum, an analysis of the *Tuck* factors clearly confirms that Homewood continues to be independent of the Birmingham Urbanized Area and continues to merit a first local service preference.

### **III. PROPOSED SUBSTITUTION OF CHANNEL 262A FOR CHANNEL 247A AT DADEVILLE, ALABAMA.**

44. To accommodate the provision of first local service to Gardendale, Cox proposes to substitute Channel 262A for Channel 247A in Dadeville, Alabama for WZLM(FM) (the “Dadeville Proposal”). Dale Broadcasting, Inc. (“Dale”), licensee of WZLM(FM), has consented to the modification of WZLM(FM)’s license from Channel 262A to Channel 247A and agreed to file an application to implement the changes upon grant of the Counterproposal.<sup>124</sup> Moreover, Scott Communications, which holds an option to purchase WZLM(FM), has agreed to exercise such option and to file an application with the Commission to implement the proposed changes upon grant of the Counterproposal.<sup>125</sup> In accordance with the Commission’s policies,<sup>126</sup> Cox pledges to reimburse Dale or Scott Communications, as the case may be, for reasonable costs in implementing the channel substitution.

45. The Dadeville Proposal complies with the Commission’s technical requirements.<sup>127</sup> The channel substitution will be made at the existing Dadeville transmitter site location for WZLM(FM), and operation from the proposed site would continue to provide the

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<sup>124</sup> A copy of the consent is included as Exhibit E.

<sup>125</sup> See Exhibit A (Letter from Paul Scott Alexander of Scott Communications, Inc. dated June 15, 2001).

<sup>126</sup> See, e.g., *Bowling Green, Kentucky*, DA 01-560, MM Docket No. 99-326, RM-9755 (rel. Mar. 2, 2001); *Circleville, Ohio*, 8 FCC 2d 159 (1967).

<sup>127</sup> See Exhibit B (Technical Exhibit).